

EXHIBIT 3

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1 Q Now, I want to turn to the RIMS system, if you could. Did
2 you review the Johnson '989 patent relating to the RIMS system
3 that's relied upon by Lawson for its invalidity positions?

4 A Yes, I did.

5 Q And you indicated that you had reviewed the testimony of
6 the Fisher Scientific inventors relating to the RIMS system?

7 A I have.

8 Q Did you review Ms. Eng's trial testimony from the prior
9 trial between ePlus and SAP concerning the work that IBM did
10 for Fisher Scientific?

11 A Yes.

12 Q Did you review Ms. Eng's deposition testimony in this
13 case?

14 A Yes, I did -- deposition testimony, yes.

15 Q Did you review Mr. Gounaris's 's trial testimony from the
16 prior trial between ePlus and SAP concerning IBM's work for
17 Fisher Scientific?

18 A I was actually in attendance for both Ms. Eng's and Mr.
19 Gounaris's testimony, so I was there, and I've also reviewed
20 their testimony since.

21 Q Now, does the description of the system in the '989 patent
22 serve to substantiate the details of any particular commercial
23 version of the Fisher RIMS system that was allegedly publicly
24 used prior to August of 1994?

25 A According to the testimony of the inventors in their

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1 depositions and in the prior trial, no, it does not. There are
2 features and functions that are described in the '989 patent
3 that were never implemented into the RIMS system, and there are
4 RIMS system features and functions that were added that were
5 not described in the '989 patent, and that this evolved over
6 time. There were several versions of RIMS that evolved over a
7 period of time starting prior to 1994 and continuing beyond
8 1994.

9 Q Did Lawson provide any evidence of any Fisher Scientific
10 customer who had a RIMS system installed having all the
11 features described in the '989 patent?

12 A No.

13 Q Let's turn now to the functionality of the RIMS system as
14 described in that '989 patent, and can you just describe at a
15 high level the functionality of that system?

16 A Yes. The RIMS system, as described in the '989 patent, is
17 a seller's system. It's not a buyer's system like the
18 patents-in-suit, so it's operated by a customer service
19 representative who is an employee of Fisher.

20 When it's installed at a Fisher customer, according to the
21 inventors, a Fisher customer service representative operates
22 the Fisher RIMS system and takes requests from buyers who work
23 for the customer and enter it into the system, but -- and then
24 the system determines where the items that that customer wants
25 are. They could be in a local, what's called just-in-time

1 inventory, they could be at a distributor, the Fisher
2 distributor's inventory, the corporate inventory. They could
3 be something that Fisher is going to purchase from an outside
4 vendor and then deliver and resell to the buyer.

5 So it creates a requisition, and it completes that
6 transaction, all done by the Fisher CSR, and it delivers the
7 item and manages the inventory. RIMS stand for requisition and
8 inventory management system, and that's what it is. It's a
9 requisition and inventory management system that works from the
10 seller's standpoint. It's a seller's system.

11 Q Now, so you indicated that the distributor's customer
12 service representative was the user of the RIMS system. How is
13 that relevant to your analysis as to whether the RIMS system is
14 an electronic sourcing system as required by the system claims
15 at issue here?

16 A Well, we have a construction that I have referred to and
17 understood as to what an electronic sourcing system is, and
18 it's a buyer's system.

19 MS. ALBERT: Can we put the juror's glossary of claim
20 terms up on the screen.

21 Q And if you look about the middle of the page, has the
22 Court construed the term electronic sourcing system?

23 A Yes, it has.

24 Q What is the Court's construction of that claim term?

25 A It's an electronic system for use by a prospective buyer

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1 to locate and find items to purchase, to purchase from sources,
2 suppliers, or vendors, and in this case, I believe sources,
3 suppliers, and vendors are synonymous.

4 Q And how is it relevant to the issue of whether the RIMS
5 system satisfies the claim requirement of an electronic
6 sourcing system, of whether or not the user of the system is
7 the distributor's customer service representative?

8 A The RIMS system is a seller's system. It's not for use by
9 the prospective buyer. It's for use by the Fisher customer
10 service representative or CSR.

11 Q Could the RIMS system be used to purchase goods from
12 multiple different sources, suppliers, or distributors?

13 A No. Only from Fisher.

14 Q Now, did the RIMS system have a database?

15 A Yes.

16 Q Did it have a database with records of items?

17 A Yes.

18 Q Do you have an opinion as to whether or not that database
19 constitutes a database with multiple vendor catalogs?

20 A I do have an opinion, yes.

21 Q What is your opinion?

22 A It does not.

23 Q Why not?

24 A It is not -- the items have no vendor or source
25 association with them as a catalog item would, because all of

1 ultimately sell to the buyer, but it is not where the customer
2 buys the item.

3 Q Was there any way to select product catalogs to search
4 within the RIMS system?

5 A Well, the RIMS system doesn't have catalogs, but even if
6 you were to construe its parts master to be a catalog, and I
7 wouldn't construe it that way because it doesn't have -- the
8 items aren't related to vendors, but even if you were to
9 construe it that way, it would only have one, so you can't
10 select which one you want from multiple, because it would only
11 have one.

12 Q Did the RIMS system include a search program?

13 A No.

14 Q Is the presence or absence of a search program relevant to
15 any claims at issue here?

16 A Several of the claims.

17 MS. ALBERT: Mike, could we see the jurors' claim
18 term glossary at page four.

19 Q In the middle of that glossary, there's a claim element,
20 means for searching for matching items among the selected
21 product catalogs; do you see that?

22 A I do.

23 Q And what structures has the Court defined would satisfy
24 that claim limitation?

25 A Well, it says the materials X of this element are

1 disclosed as search programs and modules operating on a
2 computer system with access to the given database and their
3 equivalents, and then it cites the columns and rows within the
4 patent where those corresponding structures, materials, or acts
5 are referenced.

6 Q So if the RIMS system as described in the '989 patent does
7 not have a search program, would that system satisfy this claim
8 requirement?

9 A It would -- for that reason alone, it wouldn't satisfy the
10 claim element. It also wouldn't because it can't search among
11 selected catalogs because you can't select a catalog.

12 Q And this particular claim element, what claim is it
13 relevant to?

14 A '683, claim three.

15 MS. ALBERT: And, Mike, if we can continue to look
16 down further on the claim glossary, down below that, there's
17 another element, means for searching for matching items that
18 match the entered product information in the selected portions
19 of the database, and that element comes from the '172 patent,
20 claim one.

21 Q Do you see that, Mr. Hilliard?

22 A I do.

23 Q What structures has the Court defined as being required in
24 order to satisfy this claim requirement?

25 A Once again, there's reference to the columns and rows

1 within the '172 patent that identify the specific corresponding
2 structures, materials, or acts.

3 Q And what is the text of the Court's definition there?

4 A The corresponding structures, materials, or acts of this
5 element is disclosed as search programs and modules operating
6 on a computer system with access to data in a database or other
7 file system and their equivalents. And as I say, it refers to
8 the specific places within the '172.

9 Q So if the RIMS patent as described in the '989 patent does
10 not have any description of a search program, would that system
11 in the '989 patent satisfy this claim requirement?

12 A No.

13 Q Could the RIMS system at the customer's facility build a
14 requisition from data relating to selected matching items found
15 in conducting searches of vendor catalogs and their associated
16 sources?

17 A No, it can't do that for a number of reasons. There are
18 no catalogs, you can't select a catalog, you can't search --
19 without a search, there are no matching items and so forth.

20 THE COURT: Ms. Albert, how much longer do you have
21 with this witness?

22 MS. ALBERT: I probably have another area.

23 THE COURT: Well, I think probably we ought to take
24 lunch. Their lunches are here, so take your notebooks with
25 you, please.

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1 A This is a requisition screen from the RIMS system.

2 Q I'm sorry. Go ahead.

3 A It shows the account number, which is a
4 department, and line items.

5 Q Now, do the line items that are listed in that
6 requisition include information relating to the
7 sources from which the item are to be procured?

8 A No, there's no source information. There's only
9 one source in the Fisher RIMS system.

10 Q Why didn't the requisition built by the RIMS
11 system need to include vendor information?

12 A There's only one vendor.

13 Q Does the electronic sourcing system of the ePlus
14 patents require that the requisition line items have
15 associated source or vendor information?

16 A Yes.

17 Q Why is that necessary?

18 A Well, because in the patents-in-suit they call for
19 the ability of the buyer to go through catalogs and to
20 select the sources from which he or she wants to buy.

21 And so the requisition needs to reflect the sources
22 that are selected or vendors - source and vendor I'm
23 using interchangeably - that the buyer has selected.

24 Q Then does the system take that requisition and
25 need to be able to generate purchase orders using the

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1 data in that requisition?

2 A Yes. The '683 patent, Claim Three, and many of
3 the other claims all talk about generating multiple
4 purchase orders from the requisition, and the reason
5 for multiple purchase orders is that the individual
6 line items in the requisition are each associated with
7 vendors, and you have to have a separate purchase
8 order for reach vendor.

9 Q So is it necessary to the functionality of being
10 able to process that requisition to generate purchase
11 orders, is it necessary to have requisitions with
12 associated vendor information?

13 A Yes, otherwise you wouldn't know what vendors to
14 issue the purchase orders to. Or the system wouldn't
15 know, pardon me.

16 Q Did the RIMS system generate a purchase order from
17 a requisition?

18 A The RIMS system generated a purchase order block
19 at the RIMS system, which is the on-site system
20 operated by the Fisher customer service rep or CSR,
21 and that purchase order block then went to the Fisher
22 warehouse where a purchase order could conceivably be
23 generated, but it would be generated with manual
24 intervention.

25 Q Can we look at some figures in the '989 patent

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1 that concern this purchase order functionality? And
2 if we could look at DX 7 at figure 5A.

3 Can you explain, Mr. Hilliard, what happens in the
4 system after the CSR accepts the requisition and when
5 you reach the decision block labeled 332 there?

6 A Yes. Can we blow up this section? Yes, a
7 decision block shows that -- the diamond refers to a
8 decision. So there's a question as to whether the
9 item on the requisition is of type 1, 3 or 4.

10 MR. McDONALD: Your Honor, I object. This is
11 outside the scope of Mr. Hilliard's report.

12 MS. ALBERT: Your Honor --

13 THE COURT: I don't have Mr. Hilliard's
14 report here. Does somebody have it for me so I can
15 see where it is?

16 MS. ALBERT: Your Honor, Mr. Hilliard was
17 questioned at length about this figure in the course
18 of his deposition, and we have a stipulation with Mr.
19 McDonald that the experts can testify concerning
20 opinions that were elicited from them in the course of
21 the deposition.

22 MR. McDONALD: We have talked about that.
23 That's not the case. That was for the initial --

24 THE COURT: I didn't hear you. Talk about it
25 and what? We have talked about it and what?

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1 to figure 5A.

2 THE COURT: Figure 5A is the one he's
3 testifying about?

4 MS. ALBERT: That's correct, Your Honor.

5 THE COURT: Well --

6 MR. McDONALD: That's actual in figure 5B,
7 Your Honor.

8 THE COURT: Ms. Albert, is it 5A or 5B?

9 MS. ALBERT: I think 5B is a continuation of
10 figure 5A. These specific quotations might be.

11 THE COURT: All right. Anything else?

12 MS. ALBERT: That's all I connote at this
13 current time.

14 THE COURT: This is the hour of decision.

15 All right. Anything else, Mr. McDonald?

16 MR. McDONALD: No, Your Honor.

17 THE COURT: It looks to me like in paragraphs
18 81 through 83 and in 72, he is covering in fair detail
19 the very topic he's addressing now. And while he may
20 not have cited a specific figure in his report, he's
21 doing everything but citing the figure in his report.
22 So I overrule the objection to the testimony.

23 MS. ALBERT: Thank you, Your Honor.

24 BY MS. ALBERT:

25 Q So I think the pending question was could you

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1 explain what happens in the RIMS system after the CSR
2 accepts a requisition and at the point where you reach
3 the decision block 332?

4 A Yes. The diamond-shaped block indicates that
5 there's a logic decision that's made by the Fisher
6 RIMS system to determine whether the item that's being
7 requisitioned is a type 1 item, which is a
8 distributor-owned item that's located at the Just In
9 Time location at the customer's site, a type 3 item,
10 which is a distributor-owned item that's located at
11 the warehouse, or a type 4 item, which is an item that
12 the distributor buys and resells to the customer.

13 If so, the system creates a purchase order data
14 block, as I mentioned in response to your prior
15 question, over here on the right. And if not, the
16 system generates what's called a customer internal
17 P.O., although that internal P.O. is really not a
18 purchase order. It's a material transfer request.

19 Q What's the difference between a material transfer
20 request and a purchase order?

21 A In a purchase order something is going to be
22 purchased as is the case with the type 1, 3 or 4. The
23 other types that are active are the 5 and 6. Five
24 being an item that's not handled by the system and 6
25 being a -- so I'm going to ignore 5 for a moment. Six

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1 being a customer-owned item that's located at the Just
2 In Time warehouse at the customer's location.

3 Now, in the case of that type 6, since it's a
4 customer-owned item, there is no purchase. The
5 customer doesn't need to purchase that item because
6 the customer already owns that item. So this is
7 really a material transfer, not a purchase. Although,
8 there's a reason, I believe, why it's called that in
9 this patent.

10 Q Does this diagram show the RIMS system generating
11 multiple purchase orders from a single requisition?

12 A No, it does not. It shows on the right-hand side
13 a purchase order block, which is sent to the host
14 system, and the left-hand side the initiation of
15 basically a material transfer that transfers the
16 customer's own inventory from one department to
17 another. No purchase or sale occurs.

18 Q Now, I want to turn to the converting
19 functionality that's required by some of the claims.
20 Is there any description in the '989 patent of using
21 the RIMS system to convert a selected matching item
22 associated with one vendor to another item from a
23 different vendor by means of cross referencing
24 functionality?

25 A No, there isn't.

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1 Q What about the cross reference tables at the
2 Fisher mainframe computer. Would those satisfy the
3 claim requirements?

4 A No, they don't. The cross reference tables are
5 basically a table that's in there for the purpose of
6 allowing Fisher to supply a Fisher item in place of an
7 item that has a competitor's product number. There's
8 no alternative vendor. The only vendor to the
9 customer is Fisher. So you can't -- the system
10 doesn't provide for the conversion of an item from one
11 vendor to another vendor because -- to include the
12 item of another vendor because it's all one vendor.

13 MS. ALBERT: Mike, could we take a look at
14 Claim Three of the '683 patent?

15 Q You see at the bottom there there's this claim
16 element means for converting data relating to a
17 selected matching item and an associated source to
18 data relating to an item in a different source? Do
19 you see that?

20 A Yes.

21 Q Has the Court construed the meaning of the term
22 "selected matching item"?

23 A Yes, it has.

24 Q Do you know what that construction is?

25 A A selected matching item is an item that is the

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1 result of -- that's found as a result of a search,
2 something that the patent refers to as a hit.

3 MR. McDONALD: Your Honor, I object. The
4 Court has defined the term "matching item," and you
5 did want use the word "hit."

6 Q Why don't we look at the Court's construction.

7 MS. ALBERT: I want to go back, Mike, to the
8 first page, and I want to blow up the second to the
9 last item there; selected matching items.

10 Q What's the Court's construction for selected
11 matching items?

12 A These are requisition items.

13 Q So could we go back to Claim Three for a moment,
14 please? So with respect to this means for converting
15 data requirement, does that relate to requisition
16 items and an associated source?

17 A No, there's no associated source. There's only
18 one source. There's only one vendor. And there's no
19 different source because, once again, there's only one
20 vendor.

21 Q So would the RIMS system satisfy that claim
22 requirement?

23 A No.

24 Q We saw earlier the requisitions that are actually
25 built by the RIMS system. Did those requisitions

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1 these items fit that characterization.

2 Q Have you reviewed any evidence that would
3 substantiate whether or not IBM had ever had a
4 commercial version of the TV/2 search program prior to
5 IBM's work with the inventors on the electronic
6 sourcing system project?

7 A There was no evidence at all to that effect.

8 Q Now, can you describe at a high level the nature
9 of this Technical Viewer/2 search program?

10 A Yes. It's a piece of software that allows the
11 user or buyer to search through electronic information
12 to find information that's included in that electronic
13 document and to view the items that were found as a
14 result of the search.

15 Q Was TV/2 an electronic sourcing system?

16 A No.

17 Q Why not?

18 A It doesn't have any of the characteristics of an
19 electronic sourcing system. There's no -- well, can
20 we put up the construction?

21 Q Well, sure.

22 MS. ALBERT: Can we look at the glossary of
23 claim terms. Blow up that middle one, electronic
24 sourcing system.

25 Q So what characteristics are missing from the TV/2

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1 program that are required in order to constitute an
2 electronic sourcing system?

3 A An ability to complete the process described in
4 that description. You can find items, but there is no
5 purchasing capability from sources, suppliers or
6 vendors. There's nothing relating to sources,
7 suppliers or vendors at all in the TV/2 system.

8 Q Did the TV/2 program prior to 1994 include any
9 product catalogs in its database?

10 A No, it didn't come with a database.

11 Q Did TV/2 prior to August of 1994 have multiple
12 product catalogs?

13 A No.

14 Q Was there any capability using TV/2 to search for
15 items and build a requisition using those search
16 results?

17 A No, there's no requisition logic in TV/2 at all.
18 It's simply a search and display engine.

19 Q Could we take a look at DX 107, and the Bates
20 number on the page I would like to refer you to is
21 G33.

22 MS. ALBERT: Could we blow up the left-hand
23 column there?

24 Q Under some of the possibilities, we see some
25 potential uses include -- and about three bullet

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1 points down there's a reference to integrating parts
2 catalogs with dealers' computer systems such as order
3 entry, inventory management and customer records.

4 Does that describe how to use search results to build
5 a parts list which could be sent to a parts ordering
6 system?

7 A No, it just says this is a possibility and a
8 potential use. It doesn't say that the TV/2 system
9 has this capability, and, in fact, it didn't have that
10 capability.

11 Q Do you have a slide illustrating the deficiencies
12 of the TV/2 program as related to the requirements of
13 the ePlus patent claims?

14 A Yes.

15 MS. ALBERT: Could we take a look at slide 75
16 in slide deck 93?

17 Q Could you summarize your analysis of the
18 deficiencies of the TV/2 program as applied to the
19 claims?

20 A Yes. It's not a corresponding system as we have
21 just discussed. It's simply a search program. It
22 does not have multiple product catalogs. It doesn't
23 even have one product catalog. It has no requisition
24 capability and no ability to generate purchase orders.

25 Q Now, was TV/2 modified in order to be integrated

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1 into the electronic sourcing system of
2 Fisher-Scientific?

3 A Yes. Fisher engaged IBM to undertake a project to
4 modify TV/2 to work with software Fisher was
5 developing that ultimately became something called
6 Supplylink or Cornerstone. And that involved
7 significant modifications to TV/2, which both
8 Mr. Gounaris and Ms. Eng described in their deposition
9 testimony and in their trial testimony in the *SAP*
10 trial.

11 Q Now, I would like to turn to your opinions with
12 respect to each of the asserted claims and Lawson's
13 contentions regarding the RIMS system as disclosed in
14 the '989 patent and the combination of the RIMS system
15 in the '989 patent and the TV/2 search engine.

16 Have you prepared some slides -- well, have you
17 prepared a slide that summarizes some of your opinions
18 with respect to the combination of the RIMS and TV/2
19 systems?

20 A Yes.

21 Q Will you take a look at slide 107 in slide deck
22 93? So can you summarize your opinions with regard to
23 the deficiencies in the combination of the RIMS and
24 TV/2 programs as related to the requirements of the
25 patent claims?

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1 A Yes, I've tried to take requirements -- in most
2 cases, these requirements relate to multiple claims,
3 but neither system was an electronic sourcing system.
4 Neither system had multiple product catalogs. In
5 fact, it would be my opinion that neither system had
6 even a single product catalog.

7 Neither system had a means for selecting product
8 catalogs to search. Neither system had a means for
9 generating an order list that includes at least one
10 matching item selected by said means for searching
11 since there was no means for searching product
12 catalogs.

13 Neither system built requisitions using data
14 related to selected matching items and their
15 associated sources.

16 Neither system generated purchase orders from the
17 requisitions that used selected matching items and
18 their associated sources.

19 Neither system had the ability to determine
20 whether a selected matching item was available in the
21 inventory of the catalog vendor from whom the buyer
22 wanted to purchase.

23 Neither system had the capability to convert data
24 relating to a selected matching item from one source
25 to a comparable or equivalent selected matching item

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1 and a different source since the TV/2 system had no
2 sources at all, and the only source in the RIMS system
3 was Fisher itself.

4 Q Now, you mentioned these modifications that were
5 made during the electronic sourcing system project.
6 What modifications do you understand had to be made to
7 the prior RIMS system as it existed prior to the work
8 on this electronic sourcing system project to render
9 it useful and to have the functionality required by
10 the electronic sourcing system of the patent?

11 A Well, I've relied on the deposition testimony of
12 the inventors who were involved in the project. And
13 the description that they gave of what had to be done
14 I wouldn't even call modifications.

15 They, essentially, tore the RIMS system limb from
16 limb and reused some code, but, essentially, it was a
17 whole new development. They had to develop -- since
18 the RIMS system was a seller oriented system --

19 MR. McDONALD: I object. I think we're very
20 vague here as to the timing of whether any of these
21 changes even relate to the claims in the case. I
22 think it's irrelevant.

23 MS. ALBERT: I think my question specifically
24 said the RIMS system as it existed prior to the
25 inventors' work on the electronic sourcing system of